

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE JOBIN SEBASTIAN

MONDAY, THE 4TH DAY OF NOVEMBER 2024 / 13TH KARTHIKA, 1946

WP(CRL.) NO. 1093 OF 2024

PETITIONER:

YASAR ARAFATH A.M., AGED 27 YEARS
S/O. MUHAMMED ARANGATHUPARAMBIL HOUSE, KUMARAPPANAL,
VARAVOOR VILLAGE, VARAVOOR P.O, CHERUTHURUTHI,
THRISSUR, TEMPORARILY RESIDING AT C/O. USMAN,
ARANGATHUPARAMBIL HOUSE, KOZHIKODE, PIN - 680585

BY ADVS.
JITHIN BABU A
ARUN SAMUEL
ANOOD JALAL K.J.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY, GOVERNMENT
OF KERALA (HOME DEPARTMENT, SECRETARIATE,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DEPUTY INSPECTOR OF POLICE, RANGE OFFICE, THRISSUR,
CHEMBOOKAVU, THRISSUR, PIN - 680020
- 3 THE COMMISSIONER OF POLICE
THRISSUR CITY, RAMAVARMAPURAM, THRISSUR DISTRICT, PIN -
680631
- 4 THE STATION HOUSE OFFICER
CHERUTHURUTHI POLICE STATION THRISSUR DISTRICT, PIN -
679531



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5 **ADVISORY COMMITTEE**
REPRESENTED BY ITS SECRETARY, KERALA ANTISOCIAL
ACTIVITIES (PREVENTION) ACT, 2007, VIVEKANANDA NAGAR,
ELAMAKKARA P. O, KOCHI, PIN - 682006

BY ADVS.
SMT. T.V. NEEMA, SENIOR PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 04.11.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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"C.R."**JUDGMENT****Jobin Sebastian, J.**

This writ petition is filed assailing Ext.P6 order of restriction passed against the petitioner under Section 15(1)(b) of the Kerala Anti-Social Activities (Prevention) Act, 2007 [KAA(P) Act for the sake of brevity].

2. The records reveal that the Station House Officer, Cheruthuruthy Police Station has submitted a report for initiation of proceedings against the petitioner under Section 15(1)(a) of the KAA(P) Act, 2007. For initiation of proceedings, the petitioner has been classified as a "known rowdy" as defined under Section 2(p)iii of KAA(P) Act, 2007. On receipt of the report of S.H.O. Cheruthuruthy, the District Police Chief, Thrissur City recommended for initiation of proceedings against the petitioner under KAA(P) Act. Thereafter, the Deputy Inspector General of Police, Thrissur City, the authorised officer, issued a show cause notice dated 07.06.2024 to the petitioner asking him to appear on 14.06.2024 and to show cause why an order under Section 15(1) shall not be issued against him. However, the petitioner informed his inconvenience to appear



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on 16.04.2024 and sought an adjournment. Hence another notice was issued to the petitioner and in response to the same, he appeared before the authorised officer on 20.06.2024 and raised his objections. The authorised officer after considering the reply and hearing the petitioner, passed an order under Section 15(1)(b) of the KAA(P) Act on 21.06.2024 which was served to the petitioner on 27.06.2024. As per the said order, the petitioner was restrained from entering Thrissur Revenue District for a period of six months from the date of receipt of the order. Being aggrieved by the said order, though the petitioner approached the Advisory Board, the Board confirmed the order of externment issued by the competent authority.

3. Sri. Jithin Babu A., the learned counsel appearing for the petitioner submitted that there is an inordinate delay in passing the externment order after the date of last prejudicial activity. It is pointed out that the long delay in passing the externment order will snap the live link between the last prejudicial act and the purpose of the externment order and hence the impugned order is liable to be set aside. Another contention taken by the learned counsel for the petitioner is that there was no need to initiate proceedings under the KAA(P) Act particularly when



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proceeding under Section 107 of the Code of Criminal Procedure had already been initiated against the petitioner.

4. In response, the learned Public Prosecutor asserted that there is no unreasonable delay in passing the order of externment. According to him, some minimal delay is inevitable while passing an order especially when it is the duty of the authority to ensure adherence to the natural justice principles while passing such order. The learned Public Prosecutor further submitted that proceedings under Section 107 Cr.P.C. and under Section 15(1) of KAA(P)Act operate in different spheres and initiation of proceedings under 107 Cr.P.C. will no way preclude the power of the competent authority to pass an order under Section 15(1) of the KAA(P) Act.

5. We have considered the rival contentions and perused the records. From the records, it is discernible that the petitioner was classified as a "known rowdy" due to his involvement in three cases. The details are as below:

Sl. No.	Crime No.	Police Station	Complaint Date	Sections involved	Status of case
1	466/2023	Cheruthuruthy	18.08.2023	341, 354, 354(A)(1)(i), 511, 363	Pending as SC 1220/2023



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Sl. No.	Crime No.	Police Station	Complaint Date	Sections involved	Status of case
				IPC and Sec. 8 r/w 7. 10 r/w 9(m) of POCSO Act.	
2	467/2023	Cheruthuruthy	18.08.2023	341, 323, 324 r/w 34 IPC	Pending as CC 1007/2023
3	52/2024	Cheruthuruthy	01.02.2024	143, 147, 148, 341, 323, 324, 294(b), 506 r/w 149 IPC.	Pending before the JFCM Court, Wadakkanc hery.

6. While coming to the contention of the petitioner regarding the alleged delay that occurred in passing the order it cannot be ignored that an order under Section 15(1) of KAA(P)Act is having wider ramifications as regards the personal right of an individual. So such an order could not be passed in a casual manner and the same can be passed only on credible materials and after arriving at the requisite objective and subjective satisfaction. Furthermore, there exists no rigid or inflexible standard to determine whether the delay in issuing the externment order subsequent to the last prejudicial activity is fatal. It depends upon the facts and circumstances of each case.



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7. In **Stalin C.V v. State of Kerala & Others**¹, this Court has held that before passing an order under Section 15, the principle of natural justice is to be observed, and therefore, some delay is inevitable. The question, whether a person's prejudicial activities warrant the passing of an externment order, and whether such activities are proximate to the time the order is made, depends on the facts and circumstances of each case. There is no universal rule or exhaustive guideline that applies to all situations. The test of proximity is not a rigid one based solely on the number of months between the offending acts, the submission of the proposal, and the externment order. However, if there is an undue or significant delay between the prejudicial activities and the issuance of the externment order, the constitutional court before which the matter is brought up for review will have to examine whether the authority has satisfactorily explained the delay.

8. Keeping in mind the above principles, while coming to the facts in the present case it can be seen that the last prejudicial activity was committed by the externnee on 31.01.2024. The records reveal that he was arrested on 03.02.2024 and was released on bail on the same day. The final report was submitted in the said case on 15.03.2024.

¹ [2011 (1) KHC 852]



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Immediately thereafter, on 10.04.2024, a preliminary report was submitted by the Station House Officer. It was on 01.06.2024, that the proposal was submitted by the District Police Chief to the jurisdictional authority. The competent authority issued a show cause notice on 07.06.2024, calling upon the externee to appear on 14.06.2024. He sought an adjournment and a posting was granted on 20.06.2024. It was after granting a personal hearing, the impugned order was passed on 21.06.2024. It is true that the impugned order was passed four months and 21 days after the commission of the last prejudicial activity. Having considered the sequence of events and the facts and circumstances, the delay in passing the order cannot be said to be inordinate so as to snap the live link with the last prejudicial activity

9. The next contention of the petitioner is that proceeding under Section 15(1) of the KAA(P)Act was not at all necessitated in this case as a proceeding under 107 Cr.P.C. had already been initiated. This Court in **Anita Antony v. State of Kerala and Others**², has held that the relative scope of the two proceedings is different and independent. Proceedings under S.107, Cr. P.C, is in the nature of security for keeping peace and public tranquility, and the free movement of such a person is

² [2022 KHC OnLine 455]



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not curtailed at all. The power of externment under section 15(1) on the other hand, allows an authorized officer to restrain an individual, identified as a "Known goonda" or "non-rowdy" under the Act, from entering specified areas. This order can be issued if, after affording an opportunity of being heard, the officer is satisfied that the individual is engaging in, about to engage in, or likely to engage in anti-social activities. The affected person must meet the criteria for a Known goonda or Known rowdy, and the officer must satisfy himself, objectively and subjectively, that restrictions are necessary to prevent further anti-social activities as defined under section 2(a) of the KAAP Act. In other words, 107 proceedings and the provisions under the KAAP Act operate in different spheres. At the same time, it has to be borne in mind that in a case where it is possible to prevent the detenu from continuing his anti-social activity by methods other than his preventive detention, the authorities are bound to adopt those methods rather than depriving the detenu his rights under Article 21 of the Constitution of India. It was therefore that this court as well as the Apex Court have held that in cases where proceedings such as those under Section 107 Cr.P.C are initiated, the authorities should consider whether, in spite of the initiation of such proceedings it is



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necessary to preventively detain or extern the person concerned and that on such examination if the authorities are satisfied that detention or externment is necessary, it is open to the authorities to validly do so.

10. In the case on hand, we find that a history sheet had been opened against the externee on 27.10.2023 at the Cheruthuruthi Police Station. It is thereafter that the Inspector Station House Officer of the Cheruthuruthi Police Station submitted a report dated 17.10.2023 before the SDM, Thrissur seeking initiation of proceedings under Section 107 of the CrPC and based on the same MC No 837/2023 was registered against the detenu. In so far as this case is concerned Ext.P1 order itself refers to the proceedings under Section 107 of Cr.P.C initiated against the detenu and the satisfaction of the detaining authority that such proceedings were insufficient to prevent the detenu from continuing his anti-social activities. In our view, this satisfaction of the detaining authority is fully justified because on facts we notice that after the initiation of 107 proceedings, the detenu got himself involved in Crime No 52/24 of the Cheruthuruthi Police Station involving grievous offences of the nature specified in Section 2(t) of the Act.



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11. From a perusal of the records we are satisfied that all the necessary requirements before passing an order under Section 15(1) of KAA(P) Act has been scrupulously complied in this case. We are satisfied that the competent authority passed the externment order after thoroughly verifying all the materials placed by the sponsoring authority and after arriving at the requisite satisfaction. Therefore, it cannot be said that the order passed under Section 15(1) is vitiated in any manner.

In view of the discussion above, we hold that the petitioner has not made out any case for interference.

This writ petition is dismissed.

Sd/-

RAJA VIJAYARAGHAVAN V.

JUDGE

Sd/-

JOBIN SEBASTIAN

JUDGE



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APPENDIX OF WP(CRL.) 1093/2024

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE FIR DATED 26.08.2023 IN CRIME NO.489/2023 OF CHERUTHURUTHI POLICE STATION.
- Exhibit P2 A TRUE COPY OF THE PRELIMINARY REPORT DATED 10.04.2024 SUBMITTED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
- Exhibit P3 A TRUE COPY OF THE COMMUNICATION DATED 15.04.2024 BEARING NO.125/GL/KSD/2024.
- Exhibit P4 A TRUE COPY OF THE COMMUNICATION DATED 01.06.2024 BEARING NO.84/KAAPA/SB/RC/2024.
- Exhibit P5 A TRUE COPY OF THE REPLY DATED 20.06.2024 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- Exhibit P6 A TRUE COPY OF THE ORDER OF SECOND RESPONDENT DATED 21.06.2024 IN ORDER NO. B3-10608/2024/TSR.
- Exhibit P7 A TRUE COPY OF COMMUNICATION DATED 27.06.2024 ISSUED BY THE 4TH RESPONDENT.



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Exhibit P8

A TRUE COPY OF THE ORDER DATED 26.06.2024
IN CRL.MP NO.37/2024 IN SC NO.1220/2023 OF
THE SPECIAL COURT, WADAKKANCHERY.

Exhibit P9

A TRUE COPY OF THE ORDER DATED 25.07.2024
IN O.P. NO.129/2024 BY THE 5TH RESPONDENT.